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INTERSTATE COMMERCE COMMISSION

Denver and Rio Grande Western Railroad Equipment Trust

SERIES JJ

Lease of Railroad Equipment

Dated as of May 1, 1971

THE FIRST NATIONAL BANK OF DENVER
Trustee

TO

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

Agreement

Dated as of May 1, 1971

JOHN R. LIGGITT AND ROBERT J. SULLIVAN
Vendors

WITH

THE FIRST NATIONAL BANK OF DENVER
Trustee

AND

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT, dated as of the first day of May, 1971, between THE FIRST NATIONAL BANK OF DENVER, a national banking association organized and existing under the laws of the United States, Trustee as hereinafter mentioned (hereinafter called the Trustee), party of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware (hereinafter called the Company), party of the second part:

WHEREAS, by a certain Agreement dated May 1, 1971, between John R. Liggitt and Robert J. Sullivan, Vendors, the Trustee and the Company (hereinafter called the Agreement), a counterpart original whereof is hereto annexed and made a part hereof, there was constituted "Denver and Rio Grande Western Railroad Equipment Trust, Series JJ," and it was agreed that the railroad equipment which said Vendors transfer or cause to be transferred to the Trustee thereunder is to be leased to the Company hereunder; and

WHEREAS, pursuant to the provisions of the Agreement, it is proposed that the railroad equipment hereinafter described or referred to shall be transferred to the Trustee thereunder, and the title to said railroad equipment vested in the Trustee:

NOW, THIS AGREEMENT WITNESSETH:

That the Trustee, acting in pursuance of the Agreement, for and in consideration as well of the sum of one dollar to it paid by the Company at or before the ensealing and delivery hereof, the receipt of which is hereby acknowledged, as of the rents and covenants hereinafter mentioned to be paid, kept and performed by the Company, has let and leased, and does hereby let and lease, to the Company new standard-gauge railroad rolling stock of Denver and Rio Grande Western Railroad Equipment Trust, Series JJ, to wit:

| <u>No. of Units</u> | <u>Description</u> | <u>Road Numbers (both inclusive)</u> | <u>Estimated Cost</u> |
|---------------------------|--|--|-------------------------------|
| 250 | 100-ton, 3480 cu. ft. capacity, quadruple open top hopper cars, with roller bearings (Bethlehem Steel Corporation, Builder) at \$14,435.06 each..... | 16375-16624 | \$ 3,608,765.00 |
| 150 | 100-ton, 52'6" high side flat bottom gondola cars, with roller bearings (Thrall Car Manufacturing Co., Builder) at \$14,333.00 each..... | 56125-56274 | 2,149,950.00 |
| 100 | 100-ton, 4740 cu. ft. capacity, center discharge, triple covered hopper cars, with roller bearings (Pullman Incorporated, Pullman-Standard Division, Builder) at \$16,310.40 each..... | 15400-15499 | 1,631,040.00 |
| 50 | 100-ton, 50'6" single sheathed XL box cars with loading complement, roller bearings, cushion underframe (ACF Industries, Incorporated, Builder) at \$20,470.00 each | 65300-65349 | 1,023,500.00 |
| 8 | 3000-HP (Model GP-40) general purpose diesel-electric locomotives (General Motors Corporation, Electro-Motive Division, Builder) at \$245,005.00 ea. | 3086-3093 | 1,960,040.00 |
| Total estimated cost..... | | | <u><u>\$10,373,295.00</u></u> |

or so much thereof as may be transferred and delivered to the Trustee pursuant to the Agreement, together with such other railroad equipment as shall be acquired for said trust in substitution for any of the equipment above specifically described, or in addition thereto, and subjected to this Lease as herein provided (all hereinafter sometimes collectively called the "Trust Equipment").

The estimated cost of the railroad equipment above specifically described has been certified to the Trustee to be not less than \$10,373,295.00. The cost of the Trust Equipment whenever referred to herein or in the Agreement (except as provided in Section 5 of Article I of the Agreement with respect to substituted equipment), shall mean the actual cost thereof, including only such items as may properly be included in such cost under the accounting rules of the Interstate Commerce Commission.

If the aggregate cost, as finally determined, of all the Trust Equipment acquired by the Trustee and subjected to this Lease pursuant to the foregoing provisions hereof should be less than 133⅓ % of the aggregate principal amount of Trust Certificates, there shall be subjected to this Lease (subject, however, to the provisions of Section 4 of Article I of the Agreement) additional new standard-gauge railroad rolling stock (other than work or passenger equipment), approved as to character by the Company, in such amount and of such cost that the aggregate final cost of all the Trust Equipment will be at least said percentage of said aggregate principal amount of Trust Certificates. Any such additional new standard-gauge railroad rolling stock shall be part of the Trust Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Trust Equipment above specifically described.

In the event that the Vendors shall, as provided in Section 5 of Article I of the Agreement, acquire other new standard-gauge railroad rolling stock (other than work or passenger equipment) in substitution for any portion or portions of the railroad equipment above specifically described, such other new standard-gauge rolling stock shall be included as part of the Trust Equipment and shall be subject to all the terms and conditions of this Lease and of the Agreement in all respects as though it had been a part of the original Trust Equipment hereinabove described.

If less than all of the \$7,740,000., aggregate principal amount of Trust Certificates which may be issued pursuant to the Agreement (as provided in Section 6 of Article I of the Agreement) are issued, there shall be subjected to this Lease only such units of the Trust Equipment above specifically described (including any units to be acquired in substitution therefor as provided in Section 5 of Article I of the Agreement) as shall have an aggregate final cost of at least 133⅓ % of the aggregate principal amount of Trust Certificates issued by the Trustee.

Whenever such additional or substituted new standard-gauge railroad rolling stock shall be acquired and subjected to this Lease (as provided in Section 4 or Section 5, respectively, of Article I of the Agreement), or in the event that the Trustee shall acquire and lease to the Company less than all of the Trust Equipment spe-

cifically described in this Lease, or in any supplement hereto, as hereinbefore provided, the Trustee and the Company shall execute a supplemental lease describing all of the equipment to be subjected to the terms and provisions hereof and of the Agreement. Such supplemental lease shall be filed or recorded in the same manner as this Lease.

As and when the Trust Equipment shall from time to time be transferred and delivered to the Trustee or a qualified agent of the Trustee, as provided in Section 1 of Article I of the Agreement and marked in accordance with the provisions of Article Fourth hereof, the same shall be delivered to the Company and shall upon such delivery to the Company *ipso facto* and without further deed of lease or transfer pass under and become subject to all the terms and provisions of this Lease, and be deemed a portion of the Trust Equipment leased by the Trustee to the Company hereunder, in all respects as if same had been so delivered simultaneously with the execution and delivery hereof.

And the Company, in consideration of the premises, by these presents covenants and agrees with the Trustee as follows:

ARTICLE FIRST

The Company hereby accepts (subject to the conditions mentioned in the Agreement) this Lease of all the Trust Equipment, and hereby covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee or its assigns at such place as it may designate (or, in the case of taxes, to the proper taxing authority) rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable:

(a) From time to time, as and when Trust Certificates are issued and sold, such amounts of cash, if any, as may be necessary, when added to the net proceeds of the sale of such Trust Certificates (exclusive of any accrued dividends) paid to the Trustee by the subscribers for such Trust Certificates pursuant to the Agreement, to make the total sum then deposited with the Trustee equal to the aggregate principal amount of such Trust Certificates then issued.

(b) From time to time, as and when any of the Trust Equipment shall be delivered to the Company, amounts in cash equal to the difference between the cost of the Trust Equipment so delivered, as certified to the Trustee by the Comptroller or an Assistant Comptroller of the Company, and the amount of Deposited Cash (as defined in Section 3 of Article I of the Agreement) payable in respect thereof as provided in Section 3 of Article I of the Agree-

ment, provided that the aggregate of all amounts so paid to the Trustee shall never be less than twenty-five per cent. (25%) of the cost of all the Trust Equipment which shall then and theretofore have been delivered hereunder.

(c) The necessary and reasonable expenses of the trust, including (without limitation) all expenses connected with the Trust Equipment and this Lease thereof, and with the preparation, issuance and sale of the Trust Certificates, sums required to restore to Deposited Cash and to other cash held by the Trustee under the Agreement and invested in Government Securities (as defined in and as provided by Section 9 of Article V of the Agreement), an amount equal to any expenses incurred or sustained by the Trustee in connection with any such purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any such sale of Government Securities for a sum less than the amount paid thereof, including accrued interest.

(d) Any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the Agreement and this Lease evidencing the same, which the Trustee under the Agreement may be required to pay, but excluding any and all taxes, assessments and governmental charges which the Company or the Trustee may be required to deduct or retain or withhold from the principal of the Trust Certificates or from the dividends thereon, under any present or future lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein.

(e) The amount of the dividend payable on the principal of the Trust Certificates (whether or not evidenced by dividend warrants), on the respective dates on which such dividends shall severally become payable; also, to the extent permitted by law, a sum equal to interest at the dividend rate, from the due date, upon the amount of any installments of rental payable under this paragraph (e) and the following paragraph (f) theretofore due and unpaid.

(f) The principal amount of the Trust Certificates when and as the same shall become payable, whether by declaration or upon the respective dates of maturity, or otherwise.

The Company shall not be required, however, to pay any tax, assessment or other governmental charge so long as the Company shall in good faith and by appropriate legal proceedings contest the validity thereof unless thereby, in the judgment of the Trustee, the rights or interests of the Trustee or of the Trust Certificate holders may be materially endangered.

All rentals payable hereunder shall be payable at such place or places as the Trustee shall designate, in such coin or currency of the United States of America as, at the time of payment, is legal tender for public and private debts.

ARTICLE SECOND

This Lease shall continue in force until the rents so paid hereunder shall furnish moneys sufficient to meet, discharge and cancel all the interest in said Denver and Rio Grande Western Railroad Equipment Trust, Series JJ, created in respect of the Trust Equipment. At the termination of this Lease and after all payments due or to become due from the Company hereunder and under said Agreement shall have been completed and fully made to the Trustee, title to all of the Trust Equipment shall vest in the Company, and thereupon the Trustee shall execute for filing and recording with the Interstate Commerce Commission pursuant to Section 20(c) of the Interstate Commerce Act and otherwise as may be required by law such instrument or instruments in writing as reasonably shall be requested by the Company in order to transfer to the Company all of the right, title and interest of the Trustee in and to all of the Trust Equipment; provided, however, and it is hereby agreed, that until then the title to none of the Trust Equipment shall pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be reserved to and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment nor as to the freedom of the Trust Equipment from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

ARTICLE THIRD

Upon the written request of the Company, stating that the use of any of the Trust Equipment is no longer required by the Company, evidenced by a resolution of its Board of Directors, the Trustee may, while the Company is not in default hereunder, execute and deliver a bill of sale assigning and transferring to the purchaser named by the Company the absolute title to any of the Trust Equipment; provided, however, that none of the Trust Equipment shall be so assigned or transferred unless simultaneously the Trustee shall receive from said purchaser the agreed purchase price thereof and from the Company a sum in cash equal to the amount, if any, by which said purchase price is less than the then fair value of the Trust Equipment so sold. The sum so paid to the Trustee shall be held by it for the equal and proportionate benefit of the holders of the Trust Certificates until paid out by the Trustee upon the written request of the Company, for the purchase by the Trustee of new standard-gauge railroad rolling stock (other than work or passenger equipment), free from all liens and encumbrances, and upon the delivery of such new equipment to the Trustee, accompanied by a certificate or certificates of delivery of such Trust Equipment, a bill or bills of sale, an opinion of counsel and a certificate of cost in like manner as is

provided in Section 4 of Article I of the Agreement. The Company will pay as rental for the Trust Equipment any additional moneys necessary to be paid to the manufacturers of such new railroad rolling stock, if the cost thereof exceeds sums then in the hands of the Trustee to be applied on account thereof. Any equipment so acquired and substituted shall be marked in accordance with the provisions of Article Fourth hereof and immediately upon being so marked shall be part of the Trust Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Trust Equipment herein described, and the Company and the Trustee shall execute, and the Company shall file or record, as required by law, a supplemental lease thereof, describing the same, upon and subject to all the terms and conditions hereof. The term "Trust Equipment," wherever used herein, unless otherwise indicated by the context, is intended to include any new equipment so acquired or otherwise subjected to this Lease or required or intended so to be.

No part, fixture, or device attached to any unit of the Trust Equipment, the cost of which is included in the cost of such unit to the Trustee, shall be removed by the Company without the prior approval of the Trustee nor unless such removal shall be without damage to such unit and such unit shall, notwithstanding such removal, be and remain available for service as standard-gauge railroad rolling stock. Such approval shall not be given unless the Company shall not be in default hereunder and shall file with the Trustee a certificate, executed by a Vice-President, Comptroller, Assistant Comptroller, or the Chief Mechanical Officer of the Company, showing that such part, fixture or device is no longer required by the Company and that its removal will not impair the efficiency and usefulness of such unit in the service of transportation, and unless the Company shall pay or cause to be paid to the Trustee a sum of money equal to the fair value of such part, fixture or device. The Trustee shall execute and deliver a bill of sale assigning and transferring to the purchaser named by the Company the absolute title to such part, fixture or device, and shall hold the sums of money so paid to it for the equal and proportionate benefit of the holders of the Trust Certificates until paid out by the Trustee upon the written request of the Company for the purchase by the Trustee of new standard-gauge railroad rolling stock (other than work or passenger equipment), or similar parts, fixtures or devices, free from all liens and encumbrances, in the manner and upon the terms, conditions and stipulations set forth in the foregoing paragraphs. The Trustee shall incur no liability or responsibility in consequence of its approval of the removal of any such part, fixture or device while the Company is not in default hereunder, upon receipt of the certificate and the payment hereinbefore required to be furnished to it by the Company.

The fair value of any unit of the Trust Equipment, or of any part, fixture or device thereof, as used in this Article Third or in paragraph (a) of Article Fifth hereof shall mean the greater of (i) the original cost thereof, less an amount repre-

senting depreciation thereon arising from reasonable wear and tear at the rate approved for such units of the Trust Equipment, or for any such part, fixture or device, by the Interstate Commerce Commission (but in no event exceeding one-fifteenth of such original cost per annum), or (ii) the reasonable market value thereof at the time, all as certified to the Trustee by a Vice-President, the Comptroller, an Assistant Comptroller, or the Chief Mechanical Officer of the Company, (hereinafter called Certificate of Cost).

ARTICLE FOURTH

At or before delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

“Denver and Rio Grande Western Railroad Equipment Trust, Series JJ, The First National Bank of Denver, Trustee, Owner and Lessor.”

Such plate or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of the Trust Equipment. In case, during the continuance of this Lease, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company will immediately cause the same to be restored or replaced. The Company will not change, or permit to be changed, the numbers upon any of the Trust Equipment (nor any numbers which may be substituted as herein provided), except in accordance with a statement of new numbers to be substituted therefor, which previously shall have been filed with the Trustee by the Company and consented to by the Trustee and filed or recorded in each public office where this instrument shall have been filed or recorded.

The Trust Equipment may be lettered “Denver and Rio Grande Western Railroad Company,” “Rio Grande,” “D. & R. G. W. R. R. Co.,” “D. & R. G. W.,” or in some other appropriate manner, for convenience of identification of the leasehold interest of the Company therein; but the Company, during the continuance of this Lease, will not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

ARTICLE FIFTH

(a) The Company during the continuance of this Lease, will maintain and keep all the Trust Equipment in good order and repair, at its own proper cost and charge. The Company will promptly replace, at its own cost, any of the Trust Equipment that may be worn out, lost, destroyed or otherwise rendered permanently unfit for use by any cause whatsoever (hereinafter in this paragraph called Casualty Loss

STATE OF COLORADO,
CITY AND COUNTY OF DENVER. } ss.

BE IT REMEMBERED and I do hereby certify that on this 12th day of April, 1971, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and W. G. Prescott as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and W. G. Prescott, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said W. G. Prescott is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first hereinabove written.

My commission expires June 25, 1973

Kearney Ferguson
Notary Public.

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivisions (c), (d), (e) and (f) of Article First of the Lease, other than rentals paid to restore amounts to Deposited Cash and other cash held by the Trustee hereunder, when and as the same shall be received, for the following purposes, to-wit:

(a) to the payment of the Trustee's reasonable compensation and the necessary and reasonable expenses of the trust connected with the Trust Equipment and the Lease thereof;

(b) to the payment of any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the agreements evidencing the same, which the Trustee may be required to pay;

(c) to the payment of the dividends payable on the Trust Certificates when and as the same shall become payable; and

(d) to the payment of the principal of the Trust Certificates when and as the same shall become payable according to the terms thereof or hereof.

Nothing contained herein or in the Lease or in the Trust Certificates or dividend warrants shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, or to the bearer of any dividend warrant, any amount which, under any lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein, must be deducted or retained or withheld by the Company or the Trustee from the amount payable to the holder of any Trust Certificate or to the bearer of any dividend warrant.

SECTION 3. The Trustee shall maintain an Agency in the Borough of Manhattan, in the City and State of New York, where Trust Certificates and dividend warrants may be presented for payment and where books for the registration, exchange and transfer of Trust Certificates will be kept; and upon presentation for registration, exchange and transfer the Trustee will register, exchange or transfer, or cause to be registered, exchanged or transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee assumes no liability for anything other than its own willful default, misconduct or gross neglect, or that of its officers. It shall be required to undertake no act or duty in the way of taking care of or taking possession of the Trust Equipment until fully secured against all liability and expenses. No duty of insurance or of repairs or of protection of any of the Trust Equipment is incumbent upon it, nor shall it be responsible for the filing, refiling, recording or re-recording of this Agreement or of the Lease; and the Trustee may issue and deliver Trust Certificates in advance of such filing or recording. The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment or any part of it, nor as to the freedom of the Trust Equipment or any of it from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, nor for any default on the part of the manufacturers thereof or of the Vendors, nor for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein or in the Lease be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereof.

The Trustee shall incur no liability or responsibility by reason of its application of the proceeds of the Trust Certificates and/or of rentals payable to it under subdivisions (a) and (b) of Article First of the Lease, or any part thereof, from time to time in varying amounts, prior to the completion and delivery of all the Trust Equipment, and/or prior to the final certification to it of the cost of the Trust Equipment, provided such application is made in accordance with the provisions of this Agreement.

In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 4 of Article I of this Agreement.

The Trustee may exercise its powers and perform its duties by or through such attorneys, employes, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel (who may in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel to the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be liable or responsible for the neglect, default or misconduct of any attorney, agent, employe or servant appointed and retained by it in the exercise of reasonable care, but nothing in this sentence contained shall limit any liability of the Trustee, pursuant to the first sentence of this Section 4.

The Trustee, in its individual capacity, may own, hold, and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee.

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon being satisfactorily indemnified against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

SECTION 6. No holder of any Trust Certificate or bearer of any dividend warrant issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of the trusts hereby created unless, after the aforesaid request in writing by the bearers or registered holders of not less than 25% in prin-

principal amount of the then outstanding Trust Certificates shall have been made upon the Trustee, indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, it shall decline to institute any proceedings pursuant thereto.

SECTION 7. The Trustee may, for all purposes, conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the Trust Certificates then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, warrant, receipt, request, opinion, or other paper or instrument believed by it to be genuine or authentic, and to be signed by the proper party or parties.

SECTION 9. Any moneys at any time held by the Trustee, hereunder or under the Lease, shall, until paid out by the Trustee as herein or therein provided, be deposited to the credit of the Trustee in accordance with Section 2 of Article I hereof, or be held by it, in either case in trust for the benefit of the holders of the Trust Certificates. The Trustee will, upon written request of the Company, place any such moneys so held in trust in time deposits of specified duration and, to the extent permitted by law, allow interest on any such time deposits at such rate as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental agreement, the Trustee, on request of the Company, shall invest Deposited Cash and any other cash held by the Trustee in trust pursuant to Article Third or Article Fifth of the Lease (hereinafter in this section collectively called Cash) in bonds, notes or other direct obligations of the United States of America (herein and in the Lease called Government Securities), of such maturity, and at such prices, including any premium and accrued interest, as shall be set forth in a request by the Company, such Government Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

The Trustee shall, on request of the Company, or the Trustee may, in the event Cash, or any part thereof, is requested to be paid or disbursed under the terms of the Lease or this Agreement, sell such Government Securities, or any portion thereof, and restore to Cash the proceeds of any such sale (including an amount equal to accrued interest paid from Cash at the time of purchase).

The Trustee shall restore to Cash, out of rent received by it for that purpose, under the provisions of subdivision (c) of Article First of the Lease, an amount equal to any expenses incurred or sustained in connection with any purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any sale of Government Securities for a sum less than the amount paid therefor out of Cash, including any accrued interest. The Company, if not in default under the terms of the Lease or of this Agreement or of any supplemental lease or supple-

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

ARTICLE VII.

Any request or other instrument required by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Certificate holders in person, or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose of this Agreement, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz.:

(a) the fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

STATE OF COLORADO,
CITY AND COUNTY OF DENVER. } ss.

BE IT REMEMBERED and I do hereby certify that on this 12th day of April, 1971, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and W. G. Prescott as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and W. G. Prescott, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said W. G. Prescott is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first hereinabove written.

My commission expires June 25, 1973

Kearney Ferguson
Notary Public.

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivisions (c), (d), (e) and (f) of Article First of the Lease, other than rentals paid to restore amounts to Deposited Cash and other cash held by the Trustee hereunder, when and as the same shall be received, for the following purposes, to-wit:

(a) to the payment of the Trustee's reasonable compensation and the necessary and reasonable expenses of the trust connected with the Trust Equipment and the Lease thereof;

(b) to the payment of any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the agreements evidencing the same, which the Trustee may be required to pay;

(c) to the payment of the dividends payable on the Trust Certificates when and as the same shall become payable; and

(d) to the payment of the principal of the Trust Certificates when and as the same shall become payable according to the terms thereof or hereof.

Nothing contained herein or in the Lease or in the Trust Certificates or dividend warrants shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, or to the bearer of any dividend warrant, any amount which, under any lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein, must be deducted or retained or withheld by the Company or the Trustee from the amount payable to the holder of any Trust Certificate or to the bearer of any dividend warrant.

SECTION 3. The Trustee shall maintain an Agency in the Borough of Manhattan, in the City and State of New York, where Trust Certificates and dividend warrants may be presented for payment and where books for the registration, exchange and transfer of Trust Certificates will be kept; and upon presentation for registration, exchange and transfer the Trustee will register, exchange or transfer, or cause to be registered, exchanged or transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee assumes no liability for anything other than its own willful default, misconduct or gross neglect, or that of its officers. It shall be required to undertake no act or duty in the way of taking care of or taking possession of the Trust Equipment until fully secured against all liability and expenses. No duty of insurance or of repairs or of protection of any of the Trust Equipment is incumbent upon it, nor shall it be responsible for the filing, refiling, recording or re-recording of this Agreement or of the Lease; and the Trustee may issue and deliver Trust Certificates in advance of such filing or recording. The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment or any part of it, nor as to the freedom of the Trust Equipment or any of it from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, nor for any default on the part of the manufacturers thereof or of the Vendors, nor for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein or in the Lease be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereof.

The Trustee shall incur no liability or responsibility by reason of its application of the proceeds of the Trust Certificates and/or of rentals payable to it under subdivisions (a) and (b) of Article First of the Lease, or any part thereof, from time to time in varying amounts, prior to the completion and delivery of all the Trust Equipment, and/or prior to the final certification to it of the cost of the Trust Equipment, provided such application is made in accordance with the provisions of this Agreement.

In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 4 of Article I of this Agreement.

The Trustee may exercise its powers and perform its duties by or through such attorneys, employes, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel (who may in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel to the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be liable or responsible for the neglect, default or misconduct of any attorney, agent, employe or servant appointed and retained by it in the exercise of reasonable care, but nothing in this sentence contained shall limit any liability of the Trustee, pursuant to the first sentence of this Section 4.

The Trustee, in its individual capacity, may own, hold, and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee.

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon being satisfactorily indemnified against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

SECTION 6. No holder of any Trust Certificate or bearer of any dividend warrant issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of the trusts hereby created unless, after the aforesaid request in writing by the bearers or registered holders of not less than 25% in prin-

principal amount of the then outstanding Trust Certificates shall have been made upon the Trustee, indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, it shall decline to institute any proceedings pursuant thereto.

SECTION 7. The Trustee may, for all purposes, conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the Trust Certificates then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, warrant, receipt, request, opinion, or other paper or instrument believed by it to be genuine or authentic, and to be signed by the proper party or parties.

SECTION 9. Any moneys at any time held by the Trustee, hereunder or under the Lease, shall, until paid out by the Trustee as herein or therein provided, be deposited to the credit of the Trustee in accordance with Section 2 of Article I hereof, or be held by it, in either case in trust for the benefit of the holders of the Trust Certificates. The Trustee will, upon written request of the Company, place any such moneys so held in trust in time deposits of specified duration and, to the extent permitted by law, allow interest on any such time deposits at such rate as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental agreement, the Trustee, on request of the Company, shall invest Deposited Cash and any other cash held by the Trustee in trust pursuant to Article Third or Article Fifth of the Lease (hereinafter in this section collectively called Cash) in bonds, notes or other direct obligations of the United States of America (herein and in the Lease called Government Securities), of such maturity, and at such prices, including any premium and accrued interest, as shall be set forth in a request by the Company, such Government Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

The Trustee shall, on request of the Company, or the Trustee may, in the event Cash, or any part thereof, is requested to be paid or disbursed under the terms of the Lease or this Agreement, sell such Government Securities, or any portion thereof, and restore to Cash the proceeds of any such sale (including an amount equal to accrued interest paid from Cash at the time of purchase).

The Trustee shall restore to Cash, out of rent received by it for that purpose, under the provisions of subdivision (c) of Article First of the Lease, an amount equal to any expenses incurred or sustained in connection with any purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any sale of Government Securities for a sum less than the amount paid therefor out of Cash, including any accrued interest. The Company, if not in default under the terms of the Lease or of this Agreement or of any supplemental lease or supple-

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

ARTICLE VII.

Any request or other instrument required by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Certificate holders in person, or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose of this Agreement, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz.:

(a) the fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depository, or exhibited to such depository, the Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such deposit or holding unless and until it receives proof satisfactory to it to the contrary;

(c) the ownership of bearer Trust Certificates registered as to principal and of fully registered Trust Certificates shall be determined only by the registration books of the Trustee.

ARTICLE VIII.

At the termination of the Lease, any moneys remaining in the hands of the Trustee, after paying the principal of and dividends upon the Trust Certificates, and the expenses of the Trustee, including its reasonable compensation, and after the payment of all other sums payable by the Company hereunder, shall be paid to the Company.

ARTICLE IX.

Nothing in this Agreement or in the Lease, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and their successors and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim, under or by reason of this Agreement or the Lease, or of any term, covenant or condition hereof or thereof, and all the terms, covenants, conditions, promises and agreements in this Agreement or in the Lease contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

ARTICLE X.

The term "Trustee" as used herein and in the Lease shall be held and construed to mean The First National Bank of Denver, its successors and assigns; and the word "Company" herein, to mean and include The Denver and Rio Grande Western Railroad Company, its successors and assigns. The term "Trust Equipment" wherever used herein or in the Lease, unless otherwise indicated by the context, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be. The term "Trust Certificate" or "Trust Certificates," wherever used herein or in the Lease, includes, unless the context otherwise indicates, both temporary and definitive certificates; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate.

In case of the death, resignation or inability to act of either of the Vendors, the remaining Vendor shall appoint a successor Vendor, satisfactory to the Trustee, who

shall have all the powers and perform all the duties of a Vendor under this Agreement. In case of the death, resignation, or inability to act of both Vendors, the Trustee shall appoint successor Vendors, satisfactory to the Company, who shall have all the powers and perform all the duties of the Vendors under this Agreement. Any action taken under this Agreement by either of the Vendors herein named, or by any successor Vendor, shall have the same force and effect as if taken by both of the original Vendors. The Vendors shall incur no liability hereunder, or under any bill of sale, guaranty or warranty executed by them as herein provided, for anything other than their own willful default, misconduct or gross neglect. The Vendors shall be entitled to the advice of counsel (who may in appropriate cases be counsel to the Company or to the Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done by them in accordance with such advice.

Whenever, under the provisions hereof, it is necessary or proper for any notice or demand to be given to or made upon the Company, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made to the Company by depositing a written statement thereof, securely enclosed in a postpaid wrapper, in the United States registered mail, directed to the Company at Denver, Colorado, and an affidavit by any person representing or acting on behalf of the Trustee as to such mailing, shall be conclusive evidence of the giving of such notice and the making of such demand.

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

[FORM OF FULLY REGISTERED TRUST CERTIFICATE]

\$.....

No. R.....

DENVER AND RIO GRANDE WESTERN RAILROAD
EQUIPMENT TRUST

Series JJ

EQUIPMENT TRUST CERTIFICATE

TOTAL ISSUE \$7,740,000.

Dividends at the rate of % per annum

Payable May 1 and November 1

The First National Bank of Denver, Trustee

PRINCIPAL HEREOF PAYABLE

1, 19 .

THE FIRST NATIONAL BANK OF DENVER, Trustee under an Agreement dated as of May 1, 1971, by and between John R. Liggitt and Robert J. Sullivan, Vendors, of the first part, The First National Bank of Denver, Trustee, of the second part, and The Denver and Rio Grande Western Railroad Company, of the third part, hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of \$ in DENVER AND RIO GRANDE WESTERN RAILROAD EQUIPMENT TRUST, SERIES JJ, payable on the due date stated above, upon presentation and surrender of this Certificate to the Trustee in Denver, Colorado, or at the option of the registered holder at the Agency of the Trustee in the Borough of Manhattan, in the City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount, semi-annually on May 1 and November 1 of each year, at the rate of % per annum from the date hereof, at said office or agency of the Trustee, with interest at said dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of the rentals or other moneys received by the Trustee and applicable to such payment under the provisions of said Agreement and Lease.

This Certificate is one of an issue of Certificates of serial maturities, and having an aggregate principal amount not exceeding \$7,740,000., all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or Deposited Cash or direct obligations of the United States of America in lieu thereof, as provided in said Agreement) and said Lease thereof are held by the Trustee in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement and Lease (filed with the Trustee at its office in Denver, Colorado) reference is made for a full statement of

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivisions (c), (d), (e) and (f) of Article First of the Lease, other than rentals paid to restore amounts to Deposited Cash and other cash held by the Trustee hereunder, when and as the same shall be received, for the following purposes, to-wit:

(a) to the payment of the Trustee's reasonable compensation and the necessary and reasonable expenses of the trust connected with the Trust Equipment and the Lease thereof;

(b) to the payment of any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the agreements evidencing the same, which the Trustee may be required to pay;

(c) to the payment of the dividends payable on the Trust Certificates when and as the same shall become payable; and

(d) to the payment of the principal of the Trust Certificates when and as the same shall become payable according to the terms thereof or hereof.

Nothing contained herein or in the Lease or in the Trust Certificates or dividend warrants shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, or to the bearer of any dividend warrant, any amount which, under any lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein, must be deducted or retained or withheld by the Company or the Trustee from the amount payable to the holder of any Trust Certificate or to the bearer of any dividend warrant.

SECTION 3. The Trustee shall maintain an Agency in the Borough of Manhattan, in the City and State of New York, where Trust Certificates and dividend warrants may be presented for payment and where books for the registration, exchange and transfer of Trust Certificates will be kept; and upon presentation for registration, exchange and transfer the Trustee will register, exchange or transfer, or cause to be registered, exchanged or transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee assumes no liability for anything other than its own willful default, misconduct or gross neglect, or that of its officers. It shall be required to undertake no act or duty in the way of taking care of or taking possession of the Trust Equipment until fully secured against all liability and expenses. No duty of insurance or of repairs or of protection of any of the Trust Equipment is incumbent upon it, nor shall it be responsible for the filing, refiling, recording or re-recording of this Agreement or of the Lease; and the Trustee may issue and deliver Trust Certificates in advance of such filing or recording. The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment or any part of it, nor as to the freedom of the Trust Equipment or any of it from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, nor for any default on the part of the manufacturers thereof or of the Vendors, nor for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein or in the Lease be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereof.

The Trustee shall incur no liability or responsibility by reason of its application of the proceeds of the Trust Certificates and/or of rentals payable to it under subdivisions (a) and (b) of Article First of the Lease, or any part thereof, from time to time in varying amounts, prior to the completion and delivery of all the Trust Equipment, and/or prior to the final certification to it of the cost of the Trust Equipment, provided such application is made in accordance with the provisions of this Agreement.

In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 4 of Article I of this Agreement.

The Trustee may exercise its powers and perform its duties by or through such attorneys, employes, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel (who may in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel to the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be liable or responsible for the neglect, default or misconduct of any attorney, agent, employe or servant appointed and retained by it in the exercise of reasonable care, but nothing in this sentence contained shall limit any liability of the Trustee, pursuant to the first sentence of this Section 4.

The Trustee, in its individual capacity, may own, hold, and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee.

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon being satisfactorily indemnified against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

SECTION 6. No holder of any Trust Certificate or bearer of any dividend warrant issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of the trusts hereby created unless, after the aforesaid request in writing by the bearers or registered holders of not less than 25% in prin-

principal amount of the then outstanding Trust Certificates shall have been made upon the Trustee, indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, it shall decline to institute any proceedings pursuant thereto.

SECTION 7. The Trustee may, for all purposes, conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the Trust Certificates then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, warrant, receipt, request, opinion, or other paper or instrument believed by it to be genuine or authentic, and to be signed by the proper party or parties.

SECTION 9. Any moneys at any time held by the Trustee, hereunder or under the Lease, shall, until paid out by the Trustee as herein or therein provided, be deposited to the credit of the Trustee in accordance with Section 2 of Article I hereof, or be held by it, in either case in trust for the benefit of the holders of the Trust Certificates. The Trustee will, upon written request of the Company, place any such moneys so held in trust in time deposits of specified duration and, to the extent permitted by law, allow interest on any such time deposits at such rate as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental agreement, the Trustee, on request of the Company, shall invest Deposited Cash and any other cash held by the Trustee in trust pursuant to Article Third or Article Fifth of the Lease (hereinafter in this section collectively called Cash) in bonds, notes or other direct obligations of the United States of America (herein and in the Lease called Government Securities), of such maturity, and at such prices, including any premium and accrued interest, as shall be set forth in a request by the Company, such Government Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

The Trustee shall, on request of the Company, or the Trustee may, in the event Cash, or any part thereof, is requested to be paid or disbursed under the terms of the Lease or this Agreement, sell such Government Securities, or any portion thereof, and restore to Cash the proceeds of any such sale (including an amount equal to accrued interest paid from Cash at the time of purchase).

The Trustee shall restore to Cash, out of rent received by it for that purpose, under the provisions of subdivision (c) of Article First of the Lease, an amount equal to any expenses incurred or sustained in connection with any purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any sale of Government Securities for a sum less than the amount paid therefor out of Cash, including any accrued interest. The Company, if not in default under the terms of the Lease or of this Agreement or of any supplemental lease or supple-

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

ARTICLE VII.

Any request or other instrument required by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Certificate holders in person, or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose of this Agreement, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz.:

(a) the fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depository, or exhibited to such depository, the Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such deposit or holding unless and until it receives proof satisfactory to it to the contrary;

(c) the ownership of bearer Trust Certificates registered as to principal and of fully registered Trust Certificates shall be determined only by the registration books of the Trustee.

ARTICLE VIII.

At the termination of the Lease, any moneys remaining in the hands of the Trustee, after paying the principal of and dividends upon the Trust Certificates, and the expenses of the Trustee, including its reasonable compensation, and after the payment of all other sums payable by the Company hereunder, shall be paid to the Company.

ARTICLE IX.

Nothing in this Agreement or in the Lease, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and their successors and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim, under or by reason of this Agreement or the Lease, or of any term, covenant or condition hereof or thereof, and all the terms, covenants, conditions, promises and agreements in this Agreement or in the Lease contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

ARTICLE X.

The term "Trustee" as used herein and in the Lease shall be held and construed to mean The First National Bank of Denver, its successors and assigns; and the word "Company" herein, to mean and include The Denver and Rio Grande Western Railroad Company, its successors and assigns. The term "Trust Equipment" wherever used herein or in the Lease, unless otherwise indicated by the context, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be. The term "Trust Certificate" or "Trust Certificates," wherever used herein or in the Lease, includes, unless the context otherwise indicates, both temporary and definitive certificates; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate.

In case of the death, resignation or inability to act of either of the Vendors, the remaining Vendor shall appoint a successor Vendor, satisfactory to the Trustee, who

shall have all the powers and perform all the duties of a Vendor under this Agreement. In case of the death, resignation, or inability to act of both Vendors, the Trustee shall appoint successor Vendors, satisfactory to the Company, who shall have all the powers and perform all the duties of the Vendors under this Agreement. Any action taken under this Agreement by either of the Vendors herein named, or by any successor Vendor, shall have the same force and effect as if taken by both of the original Vendors. The Vendors shall incur no liability hereunder, or under any bill of sale, guaranty or warranty executed by them as herein provided, for anything other than their own willful default, misconduct or gross neglect. The Vendors shall be entitled to the advice of counsel (who may in appropriate cases be counsel to the Company or to the Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done by them in accordance with such advice.

Whenever, under the provisions hereof, it is necessary or proper for any notice or demand to be given to or made upon the Company, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made to the Company by depositing a written statement thereof, securely enclosed in a postpaid wrapper, in the United States registered mail, directed to the Company at Denver, Colorado, and an affidavit by any person representing or acting on behalf of the Trustee as to such mailing, shall be conclusive evidence of the giving of such notice and the making of such demand.

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivisions (c), (d), (e) and (f) of Article First of the Lease, other than rentals paid to restore amounts to Deposited Cash and other cash held by the Trustee hereunder, when and as the same shall be received, for the following purposes, to-wit:

(a) to the payment of the Trustee's reasonable compensation and the necessary and reasonable expenses of the trust connected with the Trust Equipment and the Lease thereof;

(b) to the payment of any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the agreements evidencing the same, which the Trustee may be required to pay;

(c) to the payment of the dividends payable on the Trust Certificates when and as the same shall become payable; and

(d) to the payment of the principal of the Trust Certificates when and as the same shall become payable according to the terms thereof or hereof.

Nothing contained herein or in the Lease or in the Trust Certificates or dividend warrants shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, or to the bearer of any dividend warrant, any amount which, under any lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein, must be deducted or retained or withheld by the Company or the Trustee from the amount payable to the holder of any Trust Certificate or to the bearer of any dividend warrant.

SECTION 3. The Trustee shall maintain an Agency in the Borough of Manhattan, in the City and State of New York, where Trust Certificates and dividend warrants may be presented for payment and where books for the registration, exchange and transfer of Trust Certificates will be kept; and upon presentation for registration, exchange and transfer the Trustee will register, exchange or transfer, or cause to be registered, exchanged or transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee assumes no liability for anything other than its own willful default, misconduct or gross neglect, or that of its officers. It shall be required to undertake no act or duty in the way of taking care of or taking possession of the Trust Equipment until fully secured against all liability and expenses. No duty of insurance or of repairs or of protection of any of the Trust Equipment is incumbent upon it, nor shall it be responsible for the filing, refiling, recording or re-recording of this Agreement or of the Lease; and the Trustee may issue and deliver Trust Certificates in advance of such filing or recording. The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment or any part of it, nor as to the freedom of the Trust Equipment or any of it from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, nor for any default on the part of the manufacturers thereof or of the Vendors, nor for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein or in the Lease be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereof.

The Trustee shall incur no liability or responsibility by reason of its application of the proceeds of the Trust Certificates and/or of rentals payable to it under subdivisions (a) and (b) of Article First of the Lease, or any part thereof, from time to time in varying amounts, prior to the completion and delivery of all the Trust Equipment, and/or prior to the final certification to it of the cost of the Trust Equipment, provided such application is made in accordance with the provisions of this Agreement.

In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 4 of Article I of this Agreement.

The Trustee may exercise its powers and perform its duties by or through such attorneys, employes, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel (who may in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel to the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be liable or responsible for the neglect, default or misconduct of any attorney, agent, employe or servant appointed and retained by it in the exercise of reasonable care, but nothing in this sentence contained shall limit any liability of the Trustee, pursuant to the first sentence of this Section 4.

The Trustee, in its individual capacity, may own, hold, and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee.

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and upon being satisfactorily indemnified against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of any such default, or to take action without request.

SECTION 6. No holder of any Trust Certificate or bearer of any dividend warrant issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of the trusts hereby created unless, after the aforesaid request in writing by the bearers or registered holders of not less than 25% in prin-

principal amount of the then outstanding Trust Certificates shall have been made upon the Trustee, indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, it shall decline to institute any proceedings pursuant thereto.

SECTION 7. The Trustee may, for all purposes, conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the Trust Certificates then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, warrant, receipt, request, opinion, or other paper or instrument believed by it to be genuine or authentic, and to be signed by the proper party or parties.

SECTION 9. Any moneys at any time held by the Trustee, hereunder or under the Lease, shall, until paid out by the Trustee as herein or therein provided, be deposited to the credit of the Trustee in accordance with Section 2 of Article I hereof, or be held by it, in either case in trust for the benefit of the holders of the Trust Certificates. The Trustee will, upon written request of the Company, place any such moneys so held in trust in time deposits of specified duration and, to the extent permitted by law, allow interest on any such time deposits at such rate as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental agreement, the Trustee, on request of the Company, shall invest Deposited Cash and any other cash held by the Trustee in trust pursuant to Article Third or Article Fifth of the Lease (hereinafter in this section collectively called Cash) in bonds, notes or other direct obligations of the United States of America (herein and in the Lease called Government Securities), of such maturity, and at such prices, including any premium and accrued interest, as shall be set forth in a request by the Company, such Government Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

The Trustee shall, on request of the Company, or the Trustee may, in the event Cash, or any part thereof, is requested to be paid or disbursed under the terms of the Lease or this Agreement, sell such Government Securities, or any portion thereof, and restore to Cash the proceeds of any such sale (including an amount equal to accrued interest paid from Cash at the time of purchase).

The Trustee shall restore to Cash, out of rent received by it for that purpose, under the provisions of subdivision (c) of Article First of the Lease, an amount equal to any expenses incurred or sustained in connection with any purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any sale of Government Securities for a sum less than the amount paid therefor out of Cash, including any accrued interest. The Company, if not in default under the terms of the Lease or of this Agreement or of any supplemental lease or supple-

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

ARTICLE VII.

Any request or other instrument required by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Certificate holders in person, or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose of this Agreement, and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument, if made in the following manner, viz.:

(a) the fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depository, or exhibited to such depository, the Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such deposit or holding unless and until it receives proof satisfactory to it to the contrary;

(c) the ownership of bearer Trust Certificates registered as to principal and of fully registered Trust Certificates shall be determined only by the registration books of the Trustee.

ARTICLE VIII.

At the termination of the Lease, any moneys remaining in the hands of the Trustee, after paying the principal of and dividends upon the Trust Certificates, and the expenses of the Trustee, including its reasonable compensation, and after the payment of all other sums payable by the Company hereunder, shall be paid to the Company.

ARTICLE IX.

Nothing in this Agreement or in the Lease, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and their successors and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim, under or by reason of this Agreement or the Lease, or of any term, covenant or condition hereof or thereof, and all the terms, covenants, conditions, promises and agreements in this Agreement or in the Lease contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

ARTICLE X.

The term "Trustee" as used herein and in the Lease shall be held and construed to mean The First National Bank of Denver, its successors and assigns; and the word "Company" herein, to mean and include The Denver and Rio Grande Western Railroad Company, its successors and assigns. The term "Trust Equipment" wherever used herein or in the Lease, unless otherwise indicated by the context, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be. The term "Trust Certificate" or "Trust Certificates," wherever used herein or in the Lease, includes, unless the context otherwise indicates, both temporary and definitive certificates; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate.

In case of the death, resignation or inability to act of either of the Vendors, the remaining Vendor shall appoint a successor Vendor, satisfactory to the Trustee, who

shall have all the powers and perform all the duties of a Vendor under this Agreement. In case of the death, resignation, or inability to act of both Vendors, the Trustee shall appoint successor Vendors, satisfactory to the Company, who shall have all the powers and perform all the duties of the Vendors under this Agreement. Any action taken under this Agreement by either of the Vendors herein named, or by any successor Vendor, shall have the same force and effect as if taken by both of the original Vendors. The Vendors shall incur no liability hereunder, or under any bill of sale, guaranty or warranty executed by them as herein provided, for anything other than their own willful default, misconduct or gross neglect. The Vendors shall be entitled to the advice of counsel (who may in appropriate cases be counsel to the Company or to the Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done by them in accordance with such advice.

Whenever, under the provisions hereof, it is necessary or proper for any notice or demand to be given to or made upon the Company, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made to the Company by depositing a written statement thereof, securely enclosed in a postpaid wrapper, in the United States registered mail, directed to the Company at Denver, Colorado, and an affidavit by any person representing or acting on behalf of the Trustee as to such mailing, shall be conclusive evidence of the giving of such notice and the making of such demand.

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

I, _____, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that JOHN R. LIGGITT and ROBERT J. SULLIVAN, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed for the uses and purposes therein contained.

Given under my hand and official seal this 15th day of April, 1971.

My commission expires

May 2, 1971

KC Gordon
Notary Public.

IN WITNESS WHEREOF the Vendors have hereunto set their hands and seals, and the Trustee and the Company have caused their names to be signed hereto by duly authorized officers, and sealed with their corporate seals duly attested, as of the day and year first above written.

Signed, sealed, acknowledged and delivered in the presence of:

Edmund H. Stein
Robert H. Manning

Charles H. Luzzatto [SEAL]
Ben C. Luzzatto [SEAL]

Vendors.

Signed, sealed, acknowledged and delivered in the presence of:

Edmund H. Stein
Robert H. Manning

By

W. H. Keenan
Vice-President.

Attest:

James H. Lawrie
Assistant Cashier.

Signed, sealed, acknowledged and delivered in the presence of:

E. H. Mann
J. A. Peterson

By

H. B. Ayden
President.

Attest:

W. G. Prescott
Secretary.

THE FIRST NATIONAL BANK
OF DENVER, TRUSTEE,

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY,

STATE OF COLORADO }
CITY AND COUNTY OF DENVER } ss.

I, EL C. GARDNER, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and JAMES R. COWGILL, Assistant Cashier of THE FIRST NATIONAL BANK OF DENVER, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as Vice-President and Assistant Cashier of said corporation, appeared before me this day in person and acknowledged that at the time of the execution of said instrument in writing they were respectively Vice-President and Assistant Cashier of said corporation; that the seal affixed thereto is the common and corporate seal of said corporation, and that they signed, sealed and delivered said instrument in writing as their free and voluntary act, and as the free and voluntary act of said THE FIRST NATIONAL BANK OF DENVER for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of April, 1971.

My commission expires May 2, 1971

El C. Gardner
Notary Public.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

BE IT REMEMBERED and I do hereby certify that on this 12th day of April, 1971, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and W. G. Prescott as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and W. G. Prescott, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said W. G. Prescott is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first above written.

My commission expires June 25, 1973

Neana Ferguson
Notary Public.